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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,105	12/01/2000	R. Doug Smith	MICE-0110-US (00.03315)	4549

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EXAMINER

ANYA, CHARLES E

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/728,105

Applicant(s)

SMITH, R. DOUG

Examiner

Charles E. Anya

Art Unit

2126

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____


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Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are not persuasive.

In response to the Final-Office action dated 8/12/2004 applicant argues:

(1) Maxwell does not teach a command that is contained in the INF file to initiate an executable software routine for installing a device driver [p. 2, lines 21 - 22 and 26 - 27; p. 3, lines 3 - 4; p. 4, lines 19 - 20]; and

(2) neither the F4 function button nor any other button disclosed in Gilbert is associated with a particular device driver [p. 4, lines 6 - 9].

As to argument (1), examiner respectfully disagrees and submits that Maxwell teaches a command in the INF file to initiate software routine for installing a device driver [see response to argument in the in Final-Office action dated 8/12/2004]. In addition, Maxwell teaches that when the "signature" value matches and the INF file is determined to be a Windows 95/98 type INF file, then the process proceeds to copy the files from the directory where the INF file is given to the directory where the OS source files exist [i.e., col. 7, lines 29 - 67]. The signature key of an INF file acts as command to initiate installing a device driver because the key determines whether to perform the methods steps 615 - 619 [installation of device driver for Windows 95/98] or 621 - 627 [installation of device driver for Windows NT] of fig. 6 [i.e., col. 6, line 65 - col. 7, line 54 and col. 9, lines 25 - 67].

In response to argument (2), examiner respectfully disagrees and notes that Maxwell teaches allowing a user to choose from a plurality of device drivers to install [process then displays all available adapter models supported by this driver. The user picks up a driver model from the displayed list; i.e., col. 9, lines 60 - 66]. Maxwell does not teach a specific means of input [i.e. a button for each device driver]. However, Gilbert teaches selectable buttons each being associated with different software that may be installed on the computer system ("\$.button..."; col. 17, lines 60 - 67; col. 18, lines 1 - 7), the selection of the selectable buttons causing execution of additional instructions that install software based on the data stored in the configuration information file (col. 18, lines 5- 10). Therefore, the combination of Maxwell, Lin and Gilbert teaches all the limitations of claim 27, 29 and 50.